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INDEX

CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 251

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SEAMPRUFE, INC. (HOLDENVILLE PLANT)

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 97-100) is reported at 222 F. 2d 858. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 10-25, 35-38) are reported at 109 NLRB 24.

JURISDICTION

The judgment of the court below was entered on May 4, 1955 (R. 101). The petition for a writ of certiorari was filed on July 21, 1955, and granted on October 10, 1955 (R. 101). The jurisdiction of this Court rests on 28 U.S.C. 1254, and Section 10(e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether an employer violates Section 8 (a) (1) of the National Labor Relations Act by prohibiting nonemployee union organizers from distributing union literature and soliciting union memberships on his plant parking lot during the employees' free time, where it is unreasonably difficult for the union to reach the employees off company property in the immediate vicinity of the plant.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., 151, *et seq.*), are set forth in the Appendix to the brief in the companion case of *National Labor Relations Board* v. *Babcock and Wilcox*, pp. 48-50, No. 250, this Term.

STATEMENT

I

The Facts

Upon the usual proceedings under Section 10 of the Act, the Board, on July 7, 1954, issued its findings of fact, conclusions of law, and order (R. 10-25, 35-38). The facts, as found by the Board and adopted by the court below, may be summarized as follows:

Respondent's manufacturing plant is located in the outskirts of Holdenville, Oklahoma, a town of approximately 6,000 residents (R. 12; 46-48, 51, 69, 93). Its 200 employees reside in Holdenville, or in surrounding communities up to 30 miles from the

plant, and come to work in private automobiles (R. 12; 75, 42-43). Respondent maintains a parking lot on its premises for their use (R. 12; 40, 41, 47, 62-64, 93). Because the plant is in a rural or semirural area and traffic on the adjoining roads is light, there is no stop sign at the intersection of the company driveway with the public highways or on the highways themselves in the vicinity of the plant (R. 13-14; 66, 69). Employees coming to work in the morning normally do not stop at any point near the plant until they reach the parking lot on company property, and likewise leave the parking lot at the close of work without stopping off company property anywhere in the vicinity of the plant (R. 13-14; 50-51, 65-66, 42-43).

Beginning in late 1952, representatives of the International Ladies' Garment Workers' Union, AFL (herein called the Union), visited respondent's parking lot several times to distribute union literature and solicit union memberships as the employees were coming to work (R. 36, n. 4, 14-17; 40-42, 52-53, 54). After the inception of these visits, respondent posted "No Trespassing" and "Private Road" signs on its premises and consistently warned Union representatives that they were trespassing on company property and must leave the premises (R. 14-17; 41-42, 54-59, 62-64, 71-72, 79, 80-85). The Holdenville City Council likewise enacted an ordinance which forbade going upon private property without the owner's consent under penalty of fine (R. 14, n. 16; 78-79, 41, 53, 62-64, 71-

72). Union representatives who thereafter sought to distribute literature or talk to employees on company property near the parking lot during their free time were ordered off the premises by respondent, at times with company-summoned police aid (R. 15-17; 56-59, 79, 80-85).

II

The Board's Conclusions and Order

Upon these facts and the entire record, the Board found (R. 35, 18) that respondent prevented the distribution of union literature and solicitation of union memberships by nonemployee union representatives in and about its parking lot during the employees' nonworking time. The Board found further (R. 35, 14, 18) that the employees' nonstop method of driving on and off company property made it virtually impossible for union representatives to communicate with the employees off company property in the vicinity of the plant, and that the only effective access to the employees, either upon arrival at or departure from the plant, was in the parking lot area. In the absence of any showing that respondent's rule was necessary in order to maintain plant production or discipline, the Board concluded (R. 35, 18-21) that respondent's prohibition of access to the parking lot was an unreasonable impediment to the employees' right to self-organization, and hence a violation of Section 8(a)(1) of the Act. The Board rejected (R. 20, 35, n. 2) respondent's contentions that its no-

trespassing rule was lawful because it was nondiscriminatory and that the record did not support the conclusion that the Union did not have effective access to the employees away from the plant.

Accordingly, the Board ordered (R. 36-38) respondent to cease and desist from the unfair labor practice found and from any like or related conduct, to rescind its unlawful rule, and to post appropriate notices. The Board's order further provided (R. 36) that respondent may impose reasonable and nondiscriminatory regulations in the interest of plant efficiency and discipline, but not so as to deny union representatives access to the parking lot for the purpose of effecting union distribution or solicitation.

III

The Decision of the Court Below

The court below (R. 97-100) set aside the order of the Board on substantially the same grounds as those relied upon by the Court of Appeals for the Fifth Circuit in *National Labor Relations Board* v. *The Babcock and Wilcox Company*, 222 F. 2d 316, certiorari granted October 10, 1955, No. 250, this Term, which is scheduled for argument here together with this case. Holding that this Court's decision in *National Labor Relations Board* v. *LeTourneau Co.*, 324 U.S. 793, on which the Board had relied, was inapplicable because the distributors there were employees, the court denied enforcement of the order.

ARGUMENT

The question presented in this case is substantially the same as that presented in the companion case, *National Labor Relations Board* v. *The Babcock and Wilcox Company*, No. 250, this Term. For the reasons set forth in the Government's brief in that case (pp. 14-44),* to which the Court is respectfully referred, we believe that the decision below is erroneous and should be reversed.

Respectfully submitted,

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NOVEMBER, 1955.

* Copies of that brief have been served on respondent.

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